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Attorneys for the Defendants:
INTERNATIONAL COLLECTION CORPORATION, CHARLES D.
HENDRICKSON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

HERMINIA LORENZO CRUZ

Plaintiff,

vs.

INTERNATIONAL COLLECTION
CORPORATION, a California corporation,
CHARLES D. HENDRICKSON,
individually and in his official capacity,

Defendants.

Case No: C08 00991 JF(rx)

NOTICE OF MOTION; MOTION
TO DISMISS THE COMPLAINT
COMPLAINT

(F.R. C.P. RULE 12)

DATE: May 2, 2008

TIME: 9:00 a.m.

COURTROOM: 3
(reserved)

1 To all parties and their attorneys of record:

2
3 Please take notice on May 2, 2008, at the hour of 9:00 a.m. or as soon
4 there after as counsel may be heard in Courtroom 3 of the above-entitled Court
5 located at 280 S. 1st Street, San Jose, California 95113, the Defendants,
6 INTERNATIONAL COLLECTION CORPORATION "ICC", and CHARLES D.
7 HENDRICKSON "Hendrickson", will move this Court to Dismiss the Complaint
8 in this action.

9
10 This Motion will be made upon its papers and filings, the Memorandum of
11 Points and Authorities as well as such oral argument that may occur at the
12 hearing in this action should this Court invite oral argument.

13
14 Respectfully submitted,

15
16 LARRY ROTHMAN & ASSOCIATES

17
18 Dated: March 28, 2008

19
20
21 
22 LARRY ROTHMAN,
23 Attorney for Defendants:
24 INTERNATIONAL COLLECTION CORPORATION, CHARLES D.
25 HENDRICKSON
26
27
28

PROOF OF SERVICE

State of California, County of Orange:

I am employed in the county and state aforesaid. I am over the age of 18 and not a party to the within action; my business address is: 1 City Boulevard West, Suite 850, Orange, California 92868

On March 28, 2008, I served the foregoing document described as:

NOTICE OF MOTION; MOTION TO DISMISS THE COMPLAINT

on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

Fred W. Schwinn, Esq.
Consumer Law Center, Inc.
12 South First Street, Suite 1014
San Jose, California 95113-2418

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on March 28, 2008, at Orange, California, California.


WADE KRAUS

LARRY ROTHMAN & ASSOCIATES
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Defendants.

Case No: C08 00991 JF(rx)

MEMORANDUM OF
POINTS AND AUTHORITIES
IN SUPPORT OF THE MOTION
TO DISMISS THE COMPLAINT

(F.R. C.P. RULE 12)

DATE: May 2, 2008

TIME: 9:00 a.m.

COURTROOM: 3
(reserved)

1
2 The Defendants submit the following Memorandum of Points and
3 Authorities in support of their Motion to Dismiss the Complaint.
4

5 **STATEMENT OF FACTS**
6

7 This action was brought under the Fair Debt Collection Act, 15 USC, 1692
8 et seq. the "Act"
9
10

11 It is hard to ascertain what constituted the alleged violations since the
12 pleading is general and conclusionary in nature. In addition, almost all of the
13 alleged violations were barred by the Statute of Limitations.
14
15

16
17 The "underlying" claim by the Defendants to the Plaintiff was a series of
18 Collection letters due to the Plaintiff's checks being returned for non-sufficient
19 funds.
20

21 Important dates for this Court to note are February 19, 2008, which is when
22 this lawsuit was filed and February 20, 2008, on which date any preceding
23 violations are barred by the one year statute of limitations as set forth in this brief.
24
25
26
27

1 The Defendants Parties in this action are identified as follows:

2
3 INTERNATIONAL COLLECTION CORPORATION "ICC", which is the
4 collection agency which filed the State Court law suit against the Plaintiff to
5 recover the funds borrowed.

6
7 CHARLES D. HENDRICKSON "Hendrickson" an officer of ICC.

8
9 which this Federal Court Action is based.

10
11 There is also a lack of any alleged cause of action against Hendrickson
12 personally who is merely an officer of ICC.

13
14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16
17 **I**

18 **WHEN A MOTION TO DISMISS A COMPLAINT CAN BE FILED**

19 According to Federal Rules of Civil Procedure, Rule 12 b

20
21 **Rule 12.**

22
23 **(b)** Every defense to a claim for relief in any pleading must be asserted in the
24 responsive pleading if one is required. But a party may assert the following
25 defenses by motion:
26

27

1 (6) failure to state a claim upon which relief can be granted;

2
3
4 A dismissal for failure to state claim on which relief can be granted is proper
5 if it appears beyond doubt that plaintiff can prove no set of facts in support of
6 claim that would entitle him to relief, if complaint fails to allege an element
7 necessary for relief, or if affirmative defense or other bar to relief is apparent from
8 face of complaint. See Theuerkauf v. United Vaccines Div. of Harlan Sprague
9 Dawley, Inc., W.D.Mich.1993, 821 F.Supp. 1238.
10
11

12 II

13 THE STATUTE OF LIMITATIONS BARS

14 CERTAIN CLAIMS IN THE COMPLAINT

15
16
17
18
19
20 The Motion to Dismiss should be granted as to both defendants on whom
21 the statute of limitations has passed. According to 15 USC Section 1692k(d), an
22 action to enforce any liability created by this subchapter may be brought...within
23 one year from the date on which the violation occurs. Paragraphs 14, 15, 16, 17,
24 18,19, 20, 21, 22, 23,24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40,
25 41, 42, 43, 44, 45, 46, 47, 48, 29, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62,
26 27
28

1 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and 76 all contain allegations that
2 are barred by the Statute of Limitation as they allege acts that are over one (1) year
3 old.
4

5 As all of the causes of action include facts barred by the statute of
6 limitations, the aforementioned Paragraphs should be stricken and the Motion to
7 Dismiss each cause of action should be granted.
8

9
10
11 **III**

12 **IT IS UNCLEAR FROM THE REMAINING ALLEGATIONS THAT ARE**
13 **NOT BARRED BY THE STATUE OF LIMITATIONS OF THE SPECIFIC**
14 **ACTS THAT CONSTITUTE THE VIOLATIONS**
15
16
17

18 A motion to dismiss is the proper method for testing the legal sufficiency of
19 a complaint. Sioux City Community School Dist. v. International Tel. & Tel.
20 Corp., N.D.Iowa 1978, 461 F.Supp. 662 See, also, Mason City Center Associates
21 v. City of Mason City, Iowa, D.C.Iowa 1979, 468 F.Supp. 737. Motion to dismiss
22 for failure of pleadings to state claim upon which relief can be granted is usual
23 method for testing legal sufficiency of complaint. CBS Inc. v. Springboard Intern.
24
25
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1 Records, S.D.N.Y.1976, 429 F.Supp. 563, 199 U.S.P.Q. 422.

2
3
4 In paragraph 102(b), Plaintiff claims that Defendants misrepresented the
5 character, amount or legal status of the debt, in violation of 15 USC Section
6 1692e(2)(A). There are no facts in the complaint that allege specific facts
7 supporting this allegation.
8

9
10 In Paragraph 102(d), Plaintiff alleges that Defendants attempted or
11 threatened to collect treble damages from Plaintiff pursuant to California Civil
12 Code Section 1719, an action that cannot legally be taken or that was not intended
13 to be taken, in violation of 15 USC Section 1692 e(5).
14
15

16
17 The action before this Court was based upon Plaintiff's NSF check.
18 California Civil Code Section 1719 does allow treble damages. As such, it is
19 unclear what specific facts of how Defendants violated 15 USC Section 1692
20 e(5).
21
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IV

ALL CLAIMS AGAINST HENDRICKSON SHOULD BE DISMISSED

Hendrickson is merely an officer of ICC. There are no facts set both in the Complaint that would hold him personally liable for any wrongful acts. See F.R.C.P. Rule 12 b 5.

CONCLUSION

As such, the Complaint should be dismissed..

Respectfully submitted,

LARRY ROTHMAN & ASSOCIATES

Dated: March 28, 2008



LARRY ROTHMAN,
Attorney for Defendants:
INTERNATIONAL COLLECTION CORPORATION, CHARLES D.
HENDRICKSON,

PROOF OF SERVICE

State of California, County of Orange:

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION TO DISMISS THE COMPLAINT on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

Fred W. Schwinn, Esq.
Consumer Law Center, Inc.
12 South First Street, Suite 1014
San Jose, California 95113-2418

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I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on March 28, 2008, at Orange, California, California.


WADE KRAUS

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INTERNATIONAL COLLECTION
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Defendants.

Case No: C08 00991 JF(rx)

ORDER
(proposed)

(F.R. C.P. RULE 12)

DATE: May 2, 2008

TIME: 9:00 a.m.

COURTROOM: 3

(reserved)

1 This matter came regularly for hearing on Defendants' Motion to Dismiss
2 Under Rule 12 of the Federal Rules of Civil Procedure at 9:00 a.m. on May 2,
3 2008. The Plaintiff and opposing party , HERMINIA LORENZO CRUZ,
4 on behalf of himself and all others similarly situated, appeared by FRED W.
5 SCHWINN, ESQ. of the Consumer Law Center. The Defendants and Movants,
6 INTERNATIONAL COLLECTION CORPORATION and CHARLES D.
7 HENDRICKSON appeared by LARRY ROTHMAN, ESQ. of LARRY
8 ROTHMAN & ASSOCIATES.

9
10
11
12
13 The Court read and considered all papers and filings for this Motion and heard
14 arguments of counsel.
15
16
17

18 This Court grants the Motion to Dismiss the Complaint .
19

20 DATED:
21

22 _____
UNITED STATES DISTRICT COURT JUDGE
23
24
25
26
27
28

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ORDER on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

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Waide Kraus
WAIDE KRAUS